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IN THE

Supreme Court of the United States

October Term, 1967.

No. 537

LOCAL 1291, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD

and

UNITED STEELWORKERS OF AMERICA.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

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To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioner, Local 1291, International Longshoremen's Association, respectfully prays that a Writ of Certiorari issue for review of the final judgment of the United States Court of Appeals for the Third Circuit, entered in the above-entitled matter on May 31, 1967.

OPINIONS BELOW.

The Decision and Order of the National Labor Relations Board, upon the alleged unfair labor practice, reported at 154 NLRB 1415, and the Decision and Determination of Dispute by the Board upon the entitlement to perform the work at issue, reported at 151 NLRB 1, are

printed in the Joint Appendix (2a, 10a) for use of the Court below, nine copies of which are filed herewith. The opinion of the United States Court of Appeals for the Third Circuit, reported at 375 F. 2d 1011, is printed as Appendix B hereto (p. 21). The Order of the Court of Appeals denying rehearing is printed as Appendix C hereto (p. 23). The Decree of the Court of Appeals is printed as Appendix D hereto (p. 24).

JURISDICTION.

The Decree of the Court of Appeals was entered on May 31, 1967 (*infra*, p. 24). The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

QUESTIONS PRESENTED.

Where, twelve years previously, confirmed twice since, and undenied in this case, agreement was made among petitioner Longshoremen's union, the Steelworkers union, and the employer, that loading aboard ship of semi-finished steel belongs to longshoremen represented by petitioner, and this agreement was consistently followed until the present dispute, and all of the employer's ship handling has historically been performed by its ship's agent under contract with petitioner union; and where the livelihood of said longshoremen depends totally upon such loading and unloading of ships, while this would be only incidental to the main work of the Steelworkers: 1. Did not the Labor Board err in refusing to award the work to petitioner; 2. Can petitioner's picketing in support of its contract and historical right be in violation of Section 8(b)(4)(D) of the Act?

STATUTE INVOLVED.

The statutory provisions involved are the National Labor Relations Act, Sections 8(b)(4)(i)(ii)(D) and 10(k).

STATEMENT OF THE CASE.

In a memorandum opinion relying broadly upon the "expertise of the Board" (375 F. 2d 1011), the Court below has enforced an order of the National Labor Relations Board holding Petitioner in violation of Section 8(b)(4)(i) and (ii)(D) of the National Labor Relations Act, and ordering Petitioner to cease engaging in activities alleged to coerce United States Steel Corporation to assign the loading of semi-finished steel billets aboard ship to Longshoremen rather than to Steelworkers (154 NLRB No. 119). The Board's order was subsequent to a determination under Section 10(k) of the Act awarding the work to the Steelworkers (151 NLRB 1). The present petition requests review of the work assignment determination as well as the conclusion that picketing in support of a union's contract and historical rights can be in violation of Section 8(b)(4)(D) of the Act.

The significant factors herein, which were substantially devalued by the Board and wholly ignored by the Court below are: 1. The undenied agreement among the employer, the intervening union and petitioner union that the work at issue belongs to petitioner; and 2. The undenied historical performance of this employer's ship cargo work by petitioner.

The employer, United States Steel Corporation (U. S. Steel) operates a steel plant called the "Fairless Plant" at Morrisville, Pennsylvania. Petitioner, Local 1291, International Longshoremen's Association, AFL-CIO (ILA) represents longshoremen in the Port of Philadelphia and Vicinity, including all points on the Delaware River from Trenton, New Jersey to Artificial Island (below Wilmington, Delaware) inclusive (83a, 223a). Morrisville, Pennsylvania, is within this territory. The work of longshoremen includes the loading and unloading of ships, and this is the work of members of Local 1291 (83a).

When U. S. Steel completed construction of its Fairless plant in 1952, representatives of ILA met with Mr. Hart, Regional Director, United Steelworkers of America

(U. S. W.), the intervenor, and representatives of U. S. Steel, including Fred B. Lafferty, the company's Personnel Superintendent, to determine the jurisdiction in handling of ore carried in vessels to the said plant (101a-102a, 129a). Mr. Lafferty stated that decision on this was solely up to the two unions (126a-127a).[1] Mr. Hart said that if an investigation showed that the work was customarily performed by ILA, the Steelworkers would concede it to ILA. *However, he agreed that loading of ships with semi-finished steel ingots and billets when the company started producing ingots and billets, was ILA work, and that ship-loading would be performed by ILA men* (101a-102a, 104a).

Investigation showed that Mr. Hart's statement as to the custom for handling ore was correct. However, it was also ascertained, and Mr. Hart had conceded, that the activities of the steel company's Steelworker employees were limited solely to the discharging of bulk ore, and did not extend to semi-finished products, as billets and ingots (102a-103a, 104a-105a). Therefore, under the agreement, the handling of steel billets and ingots belonged to ILA, and the handling of bulk ore belonged to the Steelworkers.

At a subsequent meeting to implement this agreement, representatives of ILA and Steelworkers confirmed that longshoremen would not interfere with the handling of the ore in connection with the United States Steel ships, and that ILA had jurisdiction of all unloading and loading of billets and ingots, and that such work would be so handled in the future. Mr. Hart agreed that this was the practice at the other steel mills and that the same practice would be followed at Fairless (103a-104a, 105a-106a). *The foregoing agreement was put into effect by all parties* and, thereafter, the *bulk ore* ships called regularly at the Fair-

1. The Board, while recognizing that the agreement among the parties *did* exist, states that no representative of U. S. Steel was present (16a). The above facts, undenied, prove that U. S. Steel left the entire question of work assignment up to the unions, and was fully aware of the specific jurisdictional agreement. Indeed, subsequent events demonstrate U. S. Steel's compliance therewith until the present dispute.

less plant and were handled by the Steelworkers, *without any protest or opposition from ILA,* in strict accordance with the agreement:

Subsequently, in 1954, a meeting was had in Philadelphia, which was attended by representatives of U. S. Steel and ILA to discuss the handling of ingots, then ready for shipment. Pursuant to arrangements there made, in accordance with the 1952 tripartite agreement, loading was thereafter done by ILA labor at Pier 82, Philadelphia (106a, 107a).

In March of 1964, the longshoremen learned that the S/S "Columbia" had loaded semi-finished steel at the Fairless plant for transportation to the West Coast, by Steelworkers' labor, and that this vessel was to be regularly assigned to this operation. ILA representatives contacted the Steelworkers' regional representative, Mr. Carcella. After a series of conferences, *Mr. Carcella, as the titular head of the Steelworkers' union in this area, agreed that the loading and unloading of the S/S "Columbia" was within the jurisdiction of the longshoremen and agreed that the loading should be performed by the Longshoremen and not the Steelworkers* (108a-112a).

On that occasion, the "Columbia" was at the Fairless plant, actually being unloaded by the Steelworkers. The crew of the ship were members of maritime unions and did not load or unload. This was done solely by members of the Steelworkers union. Mr. Carcella *agreed* with the ILA representatives that if the loading of the vessel was completed by the Steelworkers on this occasion, thereafter, *all handling of cargo on the vessels at the Fairless plant would be performed by the longshoremen* (112a). Mr. Carcella telephoned Mr. Johansen, the general superintendent and manager of the U. S. Steel Fairless plant, and he confirmed this agreement (112a, 113a-114a).

However, ten days later, Mr. Carcella advised ILA officials that there had been "a change of position", and the company refused to permit ILA men to load or unload the ships. He said that the company insisted that the

Steelworkers perform this work (114a).[2] Mr. Gregory, an employee of U. S. Steel, and President of Local 4889, Steelworkers, *admitted that Mr. Carcella did originally acknowledge that the work at issue belonged to longshoremen.* He also recalled that Mr. Carcella subsequently said to him that he had to change his original position and that he was sorry he had to do so, because of being "overruled" by U. S. Steel (65a-67a).

In addition to the contractual basis, actual history and custom demonstrate ILA's clear entitlement to the work. For, it is admitted that historically in the Port of Philadelphia, ILA has loaded and unloaded all ships operated by or carrying cargo for U. S. Steel. Before the "Columbia" situation, in 1964, ships handling U. S. Steel products called regularly at the Port of Philadelphia, and, under the agreement, all of these cargoes were loaded and unloaded by longshoremen represented by Local 1291, ILA. As was the custom and necessity, a ship's agent was engaged to handle the vessel upon its entry into port. The function of the ship's agent, commonly called the "ship's husband," is to take care of all matters involving the vessel while in port. Thus, it clears customs, provides for victualing the vessel, augmenting the crew and handling the cargo. It engages stevedoring companies to load and unload the vessels. In all of these instances, the vessels bound for Morrisville which would stop at Philadelphia were under the jurisdiction of Norton, Lilly and Co., which was and is U. S. Steel's ship agent (139a-140a), and has an office at U. S. Steel's plant (92a).[3]

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2. This was despite the fact that *neither the certification* of the Steelworkers as the collective bargaining agent *nor its contract* with the U. S. Steel Corporation *covered the work* which admittedly and historically had been performed by the longshoremen.

3. Mr. Hughes, manager of the Philadelphia office of Norton, Lilly, described the services his company performs as including arranging for the loading and unloading of cargo (141a-142a). He stated, further, that U. S. Steel cargo comes through Philadelphia and is handled through his office, which arranges for loading through stevedores, who hire longshoremen of Local 1291, ILA (143a-144a).

Then, as well as now, Local 1291, ILA was party to a collective bargaining agreement with Philadelphia Marine Trade Association (PMTA) and its members, who are ship's agents and stevedoring companies, employers of longshoremen and harbor workers, operating in the Port of Philadelphia (115a, 221a-229a). Norton, Lilly *was and is* a party to the PMTA-ILA agreement (115a), and *was and is* the sole ship's agent, or "ship's husband" for U. S. Steel in this area (115a-117a). Upon all occasions prior to January, 1964, Norton, Lilly employed or contracted for ILA labor to load and unload all vessels involved in U. S. Steel's operations, except in the handling of bulk ore at the plant, in accordance with its obligation under the PMTA-ILA contract (85a-86a, 116a, 117a).[4]

4. When ore vessels headed for U. S. Steel at Morrisville stop at Philadelphia to have some of the ore removed, to lighten them, Norton, Lilly is the agent, and subcontracts the work to Pennsylvania Tidewater Dock Co., another member of PMTA, and the ships are unloaded by ILA labor (116a-117a). When a ship comes into Philadelphia, coming from or going to U. S. Steel at Morrisville, the Philadelphia office of Norton, Lilly orders the necessary clerks and longshoremen, all being ILA men (141a-142a).

REASONS FOR GRANTING THE WRIT.

I. The Decisions Below, Giving Minimal Significance to the Undenied Agreement and Long History Between This Employer and This Union, Concerning the Work at Issue, Are in Distinct Conflict With the Holding of This Court in NLRB v. Radio & Television Broadcast Engineers (CBS), 346 U. S. 573.

The Board stated, in its determination in the 10(k) proceeding:

> ". . . Respondent contends that it relinquished its claim to the ore unloading work in 1952, in exchange for an informal agreement by some representatives of the Steelworkers that future loading of billets, if any, onto ships at the plant would be performed by Respondent's members. The Steelworkers have not expressly denied that such an accord was reached. It is worthy of note, however, that Respondent's witness conceded that no representative of the Employer was present when the alleged agreement between the two unions was made. *Assuming that such an agreement was made, we do not believe that it is entitled to controlling effect in this case,* in view of the other factors which preponderate in favor of the Steelworkers' claim." (16a) (Emphasis supplied.)

We hasten to observe that the Board's reference to absence of U. S. Steel from the meetings and from the agreement is wholly erroneous. It is *undenied* that U. S. Steel was a party to the agreement in 1952, and its two confirmations in 1954 and 1964.[5] Therefore, the Board may not merely

5. This agreement was made with U. S. Steel, as well as Steelworkers. At the 1952 meeting, U. S. Steel's representatives *were* present and concurring (101a-102a, 129a). It was Mr. Lafferty, Personnel Superintendent of U. S. Steel who, at that meeting, specifically left the jurisdictional decision up to the two unions (126a-127a).

"assume that such an agreement was made"—it should so find as a fact.

But, in any view, the Board has erroneously and prejudically minimized the effect of the existing agreement, and has overwhelmed it by other, relatively minor, considerations. The Court of Appeals affirmed this, as "a problem peculiarly for the expertise of the Board." This legal application was in direct conflict with the mandate of this Court that an agreement among the parties as to work assignments must control. Further, it improperly gave no effect to the admitted custom and history among the parties, which followed and consummated that agreement.

In *NLRB v. Radio and Television Broadcast Engineers Union (CBS)*, 364 U. S. 573, 5 L. ed. 2d 302 (1961), this Court did more than merely state the Labor Board's obligation to decide jurisdictional disputes. It also stated basic criteria to be used, and made it quite clear that, in determining jurisdiction, the single essential factor is *the existence of an agreement or voluntary undertaking* between employer and employee concerning the work at issue, in genuine absence of which "other criteria" were to be applied.

In that case, the employer had collective bargaining agreements with two unions, but neither agreement provided for the specific work at issue.[6] In an effort to keep peace, the employer would not amend either collective bargaining agreement to allocate this work to either union[7],

The 1954 meeting was also attended by U. S. Steel (106a-107a). At the 1964 meeting, Mr. Carcella of Steelworkers, telephoned Mr. Johansen, General Superintendent of the Company's Fairless Works, to confirm the agreement for the future (111a-113a). Mr. Lafferty, who testified, did not deny this agreement; Mr. Carcella did not even appear to attempt to disprove the agreement.

6. The employer, Columbia Broadcasting System, had contracts with a television technicians union and a stage employees union, who were disputing assignment of lighting work for off-studio telecasts.

7. The Company refused a specific allocation because the unions did not agree as to jurisdiction among themselves. In the instant case, however, we have a specific agreement between both unions as well as the employer, and a tripartite allocation *had* been made.

but informally divided the work as it arose. This eventually caused dissatisfaction to both unions, resulting in a disruption of the Company's operations, whereupon the Company filed jurisdictional dispute charge against the disrupting union, under Section 8(b)(4)(D) of the Act. Upon a hearing under Section 10(k) of the Act, the Board held that the respondent union was not entitled to assignment of the work because there was no Board order or collective bargaining agreement to that effect. But, the Board would not make an affirmative assignment of the work, nor would it "consider other criteria, such as the employer's prior practices and the custom of the industry" (U. S. at 577, L. ed. at 306). Refusing to comply, the respondent union contended that the Board's conception of its duty was too narrow in that it "is not at all limited . . . to strictly legal considerations growing out of prior Board orders, certifications *or collective bargaining agreements*", but that *in absence of such*, the Board should then base its determination on other factors, "such as the nature of the work, the practices and customs of this and other companies, and of these and other unions, and upon the factors deemed relevant. . . ." (U. S. at 578, L. ed. at 307).

This Court agreed with the union, holding that the Board had the duty to affirmatively award the disputed work, that Section 8(b)(4)(D) "indicates a congressional purpose to have the Board do something more than merely look at prior Board orders and certifications or a collective bargaining contract to determine whether one or the other union has a clearly defined statutory or *contractual* right" to the work (U.S. at 579, L. ed. at 307). This "something more" meant the application of the Board's "experience and a knowledge of the standards generally used by arbitrators . . . and others wrestling with this problem"; it meant, also, "experience and common sense" (U.S. at 583, L. ed. at 309). But, controlling all of these considerations and of primary importance was the basic consideration of whether or not a "contractual right", "voluntary agree-

ment" or "private settlement" concerning the work existed.[8]

This Court noted, also, that the Board had adopted a position that "jurisdictional strikes in support of contract rights do not constitute violations of Section 8(b)(4)(D)" and continued (U. S. at 578, n. 12, L. ed. at 306):

> ". . . The Board has explained this position as resting upon the principle that 'to fail to hold as controlling . . . the contractual preemption of the work in dispute would be to encourage disregard for observance of binding obligations under collective-bargaining agreements and invite the very jurisdictional disputes Section 8(b)(4)(D) is intended to prevent.'"

In the instant case, we have an undenied agreement among the employer, the intervenor union and the petitioner union, that loading semi-finished steel is ILA work. This must, under this Court's decision, control. In addition, the *actual custom and practice* between the employer and petitioner union, agreed to by the intervenor union, confirms the existence of the agreement and renders it unilaterally executed. Further, it provides the most significant of the "additional criteria" set forth by this Court. There can then be no doubt that the Board wholly misapplied its "expertise", which is a *controlled* expertise, in so refusing to give the agreement among the parties a "controlling" effect.[9] The Board may not permit other factors to "preponderate" against the agreement, especially when the most

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8. Indeed, under the language of Section 8(b)(4)(D), a "voluntary adjustment" subsequent to the complaint, will cause dismissal of the charge.

9. The Board had apparently initiated a policy of using an agreement between parties *solely* to break a "state of balance" among other criteria to be considered. See also *Carpenters District Council (J. O. Veveto and Son)*, 146 NLRB No. 133. This relegation of an existing agreement to a secondary position violated the entire principle stated by this Court. Further it reverses its own prior position, approved by this Court in the *C. B. S.* case, that "contractual preemption" is "controlling".

significant of these, custom, requires the same conclusion as the agreement.

This failure to comply with the mandate of this Court requires that the decree below be reviewed and reversed.

In addition to the foregoing agreement, there is a formal collective bargaining agreement between ILA and Norton, Lilly Co., sole ship's agent for U. S. Steel, whereunder all ship loading and unloading must be assigned to ILA (221a-229a) [10]. Since Norton, Lilly is U. S. Steel's ship's agent, and handles all of that company's cargo work, such work must be performed by ILA. And, it was so performed since the inception of U. S. Steel's operation at Morrisville, and the custom has thus been established, independent of the U. S. Steel-Steelworkers-ILA agreement, and, also, in substantiation thereof.

Mr. Eitze, manager for Norton, Lilly at U. S. Steel, said that:

> "We represent United States Steel on our cargoes and we have an oral agreement with United States Steel for the Columbia husbanding work" (97a)
>
> * * *
>
> "The Witness: Well, we have an oral agreement with United States Steel insofar as the handling of the

10. The agreement between ILA and Philadelphia Marine Trade Association, of which Norton, Lilly is a member, provides, in the preamble, that it covers:

> ". . . the work pertaining to the rigging of ships, loading and unloading of all cargoes, including mail, ship's stores and baggage, in the Port of Philadelphia and Vicinity, including all points on the Delaware River from Trenton, New Jersey to Artificial Island, inclusive."
>
> * * *
>
> "The employer-Members of the Association agree that they will not directly perform work done on a pier or terminal or contract out such work which historically and regularly has been and currently is performed by employees covered by this agreement or employees covered by ILA craft agreements unless such work on such pier or terminal is performed by employees covered by I. L. A. agreements." (223a)

Columbia is concerned. That oral agreement is confined to the work that they asked us to do which is husbanding work" (97a).[11]

Thus, the evidence, oral and written, is conclusive, that, through the present, there has existed a contract between U. S. Steel and Norton, Lilly. When the "Columbia" problem loomed before the two companies, an effort was made to sweep the prior years of practice and two contracts, under the rug, in order to deprive ILA of its historic and contract rights. Only the breach of agreement committed by U. S. Steel and the Steelworkers in 1964 breaks an otherwise continuous ten years' compliance with the contracts and a history and practice of assigning the work at issue to ILA men.

The Board, therefore, had before it *two* specific agreements under *either* of which it had to find a *controlling* obligation to assign the work to ILA. Its refusal to do so must be reversed, if the *C. B. S.* case is to continue to have any practical meaning.

II. A Jurisdictional Strike in Support of Contract Rights Cannot Violate Section 8(b)(4)(D) of the Act.

As stated above, in *NLRB v. Radio and Television Broadcast Engineers Union (CBS)*, 364 U. S. 573, 577 (n. 12), 5 L. ed. 2d 302, 306 (1961), this Court recognized with approval the position which the Board had previously adopted "that jurisdictional strikes in support of contract rights do not constitute violations of Section 8(b)(4)(D)."[12] While the Board may have the power to reverse its own policies, it may not do so after this Court has

11. That "husbanding" specifically includes cargo handling was specifically admitted by U. S. Steel's Captain Baughman (28a). See, also, *The Ole Oleson*, 20 Fed. 384, 388 (E. D. Wis., 1884).

12. Similarly, in *National Woodwork Mfrs. Assn. v. NLRB*, — U. S. —, 18 L. ed. 2d 357 (1967), this Court held that where the union's objective is preservation of its own work traditionally performed, its activity could not be proscribed as secondary, under Section 8(b)(4)(B) of the Act.

adopted them by specific reference and approval thereof by inclusion in its own reasoning.

This refusal of the Board to adopt this position in the instant case, conflicting with this Court's own reasoning upon the issue, should be reviewed and reversed.

III. The "Other Criteria" Specified by This Court Similarly Require Assignment of the Work to ILA.

While the evaluation of factors under the "other criteria" stated by this Court is for the expertise of the Board, it is quite clear that the Board's conclusion that "other factors . . . preponderate in favor of the Steelworkers' claim" (16a) is wholly unsupported by the evidence. These other factors, as stated by this Court in the *C. B. S.* case are "the employer's prior practices and the custom of the industry", and "the nature of the work, the practices and customs of this and other companies, and of these and other unions". They overwhelmingly weigh in favor of ILA.

The Employer's Prior Practices, and Those of the Industry.

The history of performance by ILA of all of the disputed work for U. S. Steel has been hereinabove set forth. In addition, it stands undisputed that the practice in the same industry (including U. S. Steel) in other areas is that semi-finished and finished steel is loaded aboard ships by ILA men (102a-103a, 105a).

The Nature of the Work.

Historically, loading and unloading of ships is seaman's work, delegated by the maritime industry to longshoremen. Thus, the longshoreman is a "seaman" who performs the specific function of loading and unloading cargo, which has always been part of the seaman's work.

Atlantic Transport Co. v. Imbrovek, 234 U. S. 52, 61-62 (1913); *International Stevedoring Co. v. Haverty*, 272 U. S. 50, 52 (1926).[13]

This work is specialized, requiring experienced longshoremen who work as an integrated unit. ILA maintains a pool of teams of such skilled workers, available in the Port at all times (88a-91a). This leads to a highly efficient and economical operation and provides the assurance of skill and safety in performance (125a-126a).

In contrast, the loading of steel aboard the "Columbia", under U. S. Steel's new procedure, is performed by the Company's general laborers, who usually cut the grass, sweep roads, etc. (46a-47a, 48a, 78a, 80a). The Board attempts to justify its determination by stating that the loading of steel aboard ship is "substantially identical" with work done in the plant, as moving steel billets by cranes. Even if it were a fact that the general laborers handle steel in the plant, it is clear that the only similarity between in-plant moving and cargo handling aboard ship is the material being stowed. For, a ship is a moving, floating object, with limited space and more limited access. Stowage in a floating object requires knowledge and experience to achieve and maintain proper balance and weight distribution, protection of cargo and vessel, space economy, and a view toward efficiency of eventual unloading.[14] The

13. In this connection, it is significant that U. S. Steel's employees who are the crew of the "Columbia" are not members of Steelworkers, but of Seafarers' International Union, the deck officers of Associated Maritime Officers, the engineers of Marine Engineers Beneficial Association, and the radio operators of Radio Officers Association (34a, 145a). U. S. Steel negotiated collective bargaining agreements with each of said maritime unions (34a). Thus, there exists a recognized demarcation between U. S. Steel's production and maintenance employees and its maritime employees.

14. In the Preface to "Stowage, the Properties and Stowage of Cargoes", 3rd Edition, Captain Thomas states (p. V):

> "Safe and reliable transport demands more than judgment and foresight; it requires some knowledge of the characteristics and properties of the goods and commodities which are being dealt with. A man may be interested in what he is doing and

Board's assertion that ship-loading work is "routine"—a "simple function of hooking and unhooking" is clearly a misconception of the true fact. While hooking and unhooking may be all there is to the job *in* the plant, it is only a *part* of the job where *marine* loading and stowage is concerned.

The Economic Factor.

The real factor upon which the Board based its award is that the employer now considers it to its *economic* advantage to have the work performed by Steelworkers. Whole reliance upon this factor is not only violative of this Court's mandate, but even that factor weighs in favor of ILA. This is demonstrated by the Board's own recent award in *United Industrial Workers of North America, etc. and Albin Stevedore Co.*, 162 NLRB No. 96, 1967 CCH NLRB Para. 21,042. There, in awarding a ship-loading operation by crane to longshoremen rather than to operating engineers, the Board pointed to several very specific and significant criteria which were wholly ignored in the instant case. First of all, the Board emphasized the safety and efficiency in having *longshoremen* perform work *aboard ship* "by virtue of [their] familiarity with the physical conditions aboard ship" (p. 27,289). Then the Board

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understand what he is aiming at, but without the information indicated his efforts must be haphazard and the result uncertain."

And, at page 4:

"Stowage is that important branch of the art of seamanship which applies to the loading of a vessel and has for its aims the handling, placing and packing of goods, in a ship, in such a manner as will best ensure the following:

(1) The preservation of crew and ship from danger or injury arising from the manner in which the cargo is stowed.

(2) To protect the cargo from damage, loss or deterioration and so ensure 'sound delivery' of same.

(3) The economy of cargo space on which depends the vessel's earning capacity.

(4) The highest possible rate of port speed, i.e., the rate at which the vessel is capable of loading or discharging her cargo."

noted that it was clear that the work involved was longshore work, since "it involved the loading and discharging of cargo from vessels." And, further, *and economically most significant,* the Board pointed out that the effect of the work assignment on employment opportunities of the operating engineers "would have been only minimal," since their "principal interest" was in the construction industry; while it would have a broad and deep effect on longshoremen whose *sole* work was ship loading and unloading. The same conclusion applies completely here, where the Steelworkers' "principal interest" is in the manufacture of steel, while *loading ships is all that the longshoremen have.*

CONCLUSION.

The controlling criterion for assignment of work is the voluntary undertaking—the agreement. Therefore, the agreement among the employer and the two unions, that ILA perform the work now at issue, requires assignment thereof to petitioner. If the "other criteria" were called into play (rendered unnecessary by existence of the specific agreement), they weigh heavily in favor of petitioner; the most significant of these, the parties' past practice, and the important fact that ship's cargo work is *the sole living of the longshoremen,* emphasize that the work at issue is and has been the longshoremen's very life. Thus, the determination under Section 10(k) should have been in favor of petitioner.

The conclusion of unfair labor practice was also erroneous, since picketing in support of contract rights is protected activity, and not in violation of Section 8(b)(4)(D).

It is respectfully submitted, that this Court should grant certiorari and reverse the decisions below.

Respectfully submitted,

ABRAHAM E. FREEDMAN,
MARTIN J. VIGDERMAN,
FREEDMAN, BOROWSKY AND LORRY,
Counsel for Petitioner.

APPENDIX A.

National Labor Relations Act (29 USCA).

* * *

§ 158. Unfair Labor Practices.

* * *

(b) It shall be an unfair labor practice for a labor organization or its agents—

* * *

(4)(i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is—

* * *

(D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work:

* * *

§ 160. Prevention of Unfair Labor Practices—Powers of Board Generally.

* * *

Hearings on Jurisdictional Strikes.

(k) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of

paragraph (4)(D) of section 158(b) of this title, the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen, unless, within ten days after notice that such charge has been filed, the parties to such dispute submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute. Upon compliance by the parties to the dispute with the decision of the Board or upon such voluntary adjustment of the dispute, such charge shall be dismissed.

* * *

APPENDIX B.

(375 F. 2d 1011)

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 16186

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

and

UNITED STEELWORKERS OF AMERICA, AFL-CIO,
Intervenor,

v.

LOCAL 1291, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO,
Respondent.

ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

Argued April 3, 1967

Before McLAUGHLIN and GANEY, *Circuit Judges,* and NEALON, *District Judge*

OPINION OF THE COURT

(Filed April 28, 1967)

PER CURIAM.

In this petition for enforcement of an order of the National Labor Relations Board, the sole question is whether

the employees represented by the intervenor union or those represented by respondent union should do the disputed work. This is a problem peculiarly for the expertise of the Board. We are satisfied that the latter in arriving at its determination carefully considered all relevant factors and that its decision is entirely proper under the law.

The order of the Board will be enforced in full. Proposed decree will be submitted by the Board.

APPENDIX C.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT.

No. 16186.

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

and

UNITED STEELWORKERS OF AMERICA, AFL-CIO,
Intervenor,

v.

LOCAL 1291, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO,

Respondent.

SUR PETITION FOR REHEARING.

Present: STALEY, *Chief Judge,* MCLAUGHLIN, KALODNER, HASTIE, GANEY, SMITH, FREEDMAN and SEITZ, *Circuit Judges* and NEALON, *District Judge.*

The petition for rehearing filed by Respondent in the above entitled case having been submitted to the judges who participated in the decision of this court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.

By THE COURT,

MCLAUGHLIN,
Judge.

Dated: May 18, 1967.

APPENDIX D.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT.

No. 16186.

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

LOCAL 1291, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO,
Respondent,

and

UNITED STEELWORKERS OF AMERICA, AFL-CIO,
Intervenor.

DECREE

Before: McLAUGHLIN and GANEY, *Circuit Judges,* and NEALON, *District Judge.*

THIS CAUSE came on to be heard upon the petition of the National Labor Relations Board for enforcement of a certain order issued by it against Respondent on September 23, 1965. The Court heard argument of respective counsel on April 3, 1967, and has considered the briefs and transcript of record filed in this cause. On April 28, 1967, the Court, being fully advised in the premises, handed down its decision granting enforcement of the Board's order.

ON CONSIDERATION WHEREOF, it is ordered, adjudged and decreed by the United States Court of Appeals for the Third Circuit that the said order of the National Labor Relations Board in said proceeding be enforced, and that Local 1291, International Longshoremen's Association, AFL-CIO, its officers, agents, and representatives, abide by and perform the directions of the Board in said order contained.

By THE COURT,

GERALD MCLAUGHLIN,
Circuit Judge.

DATED: May 31, 1967.